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AGENCY, 7 ed., § 222. The same principles would preclude recovery in the present case — where, instead of *failure* to enter into a contract, there was such negligence in the formation of it that the promissor had a defense aside from that of illegality. It was argued that, on the facts, clearly no question of illegality would have arisen, if the agent had not been negligent. But the same public interest, because of which a recovery is denied on the illegal contract itself, forbids a recovery here. As the contract should not have been made in the first instance, no court will inquire whether or not it would have been performed. To be sure, most courts permit a recovery by the principal of the proceeds of an illegal transaction in the hands of his agent. *Baldwin v. Potter*, 46 Vt. 402; *Yale Jewelry Co. v. Joyner*, 159 N. C. 644, 75 S. E. 993; *Tenant v. Elliott*, 1 B. & P. 3. The soundness of these cases is open to question. See 3 WILLISTON, CONTRACTS, § 1786. However, these cases are not to be relied upon in support of the plaintiff in the present case. In the former cases, the agent will profit to the extent of the funds in his hands, if a breach of the fiduciary relation is permitted, a consideration in no wise applicable to the principal case.

ALIENS — RIGHT OF CITIZEN OF UNITED STATES ENGAGED IN IRISH REBELLION TO BE TREATED AS AN ALIEN FRIEND. — Plaintiff, formerly an Irishman, became a naturalized American citizen. He returned to Ireland and engaged in rebellious activities against the Crown. When arrested, money found on his person was seized by the authorities. Upon release he sues for its recovery. *Held*, that the plaintiff can recover. *Pedlar v. Johnstone*, [1920] 2 I. R. 450.

The common law is clear that an alien friend has all the rights of a subject in respect to his personal property and that therefore such property may not be seized because of his alienage. See *Calvin's Case*, 7 Coke, 17a; *Porter v. Freudenberg*, [1915] 1 K. B. 857, 869. See also 1 BL. COMM. 372. But when an alien domiciled in a friendly country is engaged in rebellion against the government of the country in which he is located, he forfeits almost all of his right to the diplomatic protection of his own country. See *Dennison v. Mexico*, 3 Moore Arb. 2766; Proclamation of President Taylor, 3 MOORE, INT. LAW DIG. 787; Theodore S. Woolsey in (1910) PROCEEDINGS OF AM. SOC. OF INT. LAW, 99. His nation will, however, protect him from treatment contrary to civilized usage. See *Dolan v. Mexico*, 3 Moore Arb. 2767; *Nolan v. United States*, 4 Moore Arb. 3302. But as there is no such evidence of ill usage the plaintiff in the present case has forfeited his right to be treated as a citizen of the United States, and therefore cannot rely on the protection given to alien friends. The court would have been justified in refusing to recognize that he has greater rights than an alien enemy.

APPEAL AND ERROR — DETERMINATION AND DISPOSITION OF CAUSE — MOOT CASES IN EQUITY. — The plaintiff, a mine-owner, sued to enjoin the adjutant general and governor of North Dakota from carrying into effect a proclamation by the governor that coal mines should be operated by soldiers during a strike. The court below entered an order denying a temporary injunction, and the plaintiff appealed. By the time the case was heard on appeal, the mines had been returned to the plaintiff. *Held*, that no decision be made on the merits, but that the case be remanded with directions to vacate the order without prejudice to either party. *Dakota Coal Co. v. Fraser, Adjutant General*, 267 Fed. 130 (C. C. A.).

For a discussion of this case, see NOTES, p. 416, *supra*.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — ESTABLISHMENT OF BUILDING LINES FOR AESTHETIC PURPOSES. — A state statute empowered a